Ethics for Inspectors General

DAIG Deputy Legal Advisor

703-601-1095

References

- Joint Ethics Regulation (DoDD 5500.7-R)
- AR 25-1 (Army Knowledge Management and Information Technology Management)
- SecArmy Travel Policy
- AR 58-1 (Management, Acquisition, and Use of Motor Vehicles)
- Federal Acquisition Regulation, Chapter 3

Enabling Learning Objectives

- Describe where to find ethics standards
- Explain the roles of the IG and the command ethics counselor
- Apply ethics principles concerning:
  - Travel Benefits
  - Conflicts of Interest
  - Non Federal Entities
  - Post-Federal Employment Restrictions
  - Gifts

Joint Ethics Regulation – What's In It?

- Chapter 1 – Definitions and policy
- Chapter 2 - 5 CFR Section 2635
- Chapter 3 – Non-Federal Entities
- Chapter 4 – Travel Benefits
- Chapter 5 – Conflicts of Interest
- Chapter 9 – Post-Government Service Employment

Joint Ethics Regulation, aka DoD 5500.7-R (30 Aug 93)

- Chapter 1 – Purpose, Definitions a al Policy
  - 1-100 - “Single Source of Guidance”!
  - Punitive portions in bold italics
  - 1-211 – “DoD Employees” includes
    - DoD civilians,
    - active-duty officers and enlisted Soldiers (with exceptions),
    - NAF,
    - reservists and NG while performing title 10 or 32 duties
    - any time member uses NG or reserve title or position

The Ethics Counselor

- 1-214 – “The DoD Component DAEO . . . appointed in writing . . . to provide ethics advice to DoD employees in accordance with this Regulation. . . .”
- 1-206 – “DAEO . . .Designated Agency Ethics Official”
- Is an attorney in the Army
- Let the DAEO interpret the JER – and you investigate!

Chapter 2, Section 1 – 5 C.F.R. part. 2635, “Office of Government Ethics Regulation”

- “Code of Federal Regulations”
- Applicable to all government employees (to include enlisted and title 32 NG as per DoD 5500-R), not DoD specific
- Supplemented by the JER, Chapter 2, section 2.
- www.usoge.gov/pages/laws_regs_fedregs/5cfr2635.html

Commonly Used sections of 5 CFR 2635

- Section 2635.101(b)
  - (5) “Employees shall put forth honest effort in the performance of their duties.”
  - (11) “Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.”
  - (14) “Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. . . . Determined from the perspective of a reasonable person with knowledge of the relevant facts.”

Sample Allegations -

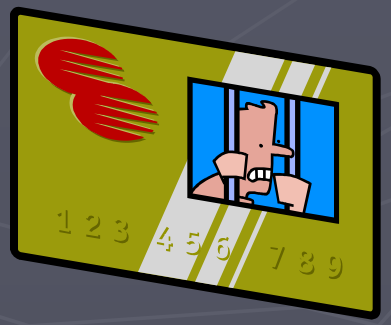
- “That MAJ Smith improperly wasted government resources by sending 14 inspectors to conduct the command inspection of the Virgin Islands detachment when only 3 inspectors were necessary in violation of 5 CFR 2635.101(b)(11).”
- “That LTC Jones improperly created an appearance of impropriety by hiring his best friend to fill the technical assistant job in violation of 5 CFR 2635.101(b)(14).”

Test Question # 1

- PCSing BN Cdr receives $600 “special and infrequent occasion” gift from unit –shotgun
- Ethics Counselor advises him to remedy this by paying unit $300
- ?

Commonly Used sections of 5 CFR 2635

- 2635.107 – “Disciplinary action for violating this part of any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.”
- Criminal caveat



Gifts

- 5 CFR 2635.203-205
- JER, 2-203
- More on this later on .

Commonly used sections of 5 CFR 2635 –

- Section 2635.702 – An employee shall not use his public office for his own private gain, for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives . . .

Sample Allegation

- “That COL Giraffe improperly ordered the AIT class to attend a seminar by the Premier Investment Group, which involved solicitation of its investment products, in violation of 5 CFR 2635.702.”

Test Question # 2

- The most precise standard to use for unauthorized use of federal communications systems is –
  - JER 2-301a
  - AR 25-1, para. 6-1f
  - 5 CFR 2635.302

JER Supplements to 5 CFR 2635 – Federal Communications

- 2-301a – Use Federal Government communications resources for official use and authorized purposes only.
  - Official use may include morale and welfare calls when deployed and approved by theater commanders.
  - Authorized purposes include –
    - Brief communications home when TDY and at work

JER Supplement to 5 CFR 2635 – Federal Communications

- 2-301a – Use Federal Government communications resources for official use and authorized purposes only.
  - Authorized purposes include brief communications reasonably made at work place or on TDY when they
    - Do not adversely affect official duty performance
    - Are of reasonable duration and frequency
    - Serve a legitimate interest
    - Don’t reflect adversely on DoD
    - Don’t overburden communications systems
    - Long distance is not charged to the government.

AR 25-1, paragraph 6-1f

- PROHIBITS –
  - Pornography
  - Sexually explicit email
  - Chain email
  - Commercial Activities
  - Political / Religious (non-Chaplain) Messages
  - Streaming
  - Unlicensed software

Gov’t Emails Releasable!

- **DAILY BRIEFING**
  November 19, 2004

- **Senator reveals Air Force-Boeing e-mail exchanges, demands accountability**
- **By Amy Klamper, CongressDaily**

- Sen. John McCain, R-Ariz., stood on the Senate floor Friday and read e-mail exchanges between Boeing Co., executives and Air Force officials that he said revealed an improper relationship aimed at securing a $30 billion tanker lease deal.

Sample Allegation

- “That SPC Round improperly used a government communications system to conduct commercial activities in violation of AR 25-1, para. 6-1f.”

Test Question # 3

- Downtown recruiting station leases parking spots from garage
- Officer who lives nearby gets permission from superior to park car there full time, avoids paying apartment parking fee
- Adequate parking space
- ?

JER Supplement to 5 CFR 2635 – Federal Communications

- 2-301b – Use of Other Federal Government Resources (except personnel use and NFE support) for official use and authorized purposes only. Agency designees may authorize limited personal use if:
  - Does not adversely affect official duty performance
  - Is of reasonable duration and frequency
  - Serves a legitimate interest
  - Don’t reflect adversely on DoD
  - No additional cost.

JER – Non Federal Entities

- Association of the United States Army

National Guard Association of the United States

Investment Services

Boy Scouts & Girl Scouts

JER - Section 3-201/2 – Official Participation in Non-Federal Entities

- DoD employees
  - MAY NOT participate in the management of non-federal entities (NFEs) in their official DoD capacities;
  - MAY act as liaisons to NFEs in their official DoD capacities.

Sample Allegation

- “That MG Soandso improperly appointed COL Green as vice-president of the local AUSA chapter in violation of DoD 5500.7-R, 3-202.”

JER - Section 3-209-210-212 – Official Participation in Non-Federal Entities

- MAY NOT endorse any NFE with the exception of fundraising for groups such as
  - CFC
  - AER
  - And support for other groups authorized by law or other directives – ie, Boy Scouts, Red Cross

Sample Allegation

- “That LT Tree improperly ordered her subordinates to pay dues to the installation community club in violation of DoD 5500.7-R, section 3-210.”

JER - Section 3-206 – Official Participation in Non-Federal Entities

- Co-sponsorship – With Sec Army approval, the Army may co-sponsor a civic or community activity, seminar, or similar event under certain circumstances but never for fundraising or membership drive events!

- Commercial Sponsorship – AR 215-1 for MWR events only.

JER - Section 3-305 – Personal Participation in Non-Federal Entities

- DoD employees may not be used to support the unofficial activity of another DoD employee in support of NFE nor for any other non-federal purpose.

Sample Allegation

- “That Ms Car improperly ordered her subordinate to go to the food mall to get her lunch in violation of DoD 5500.7-R, section 3-305.”

Travel Benefits

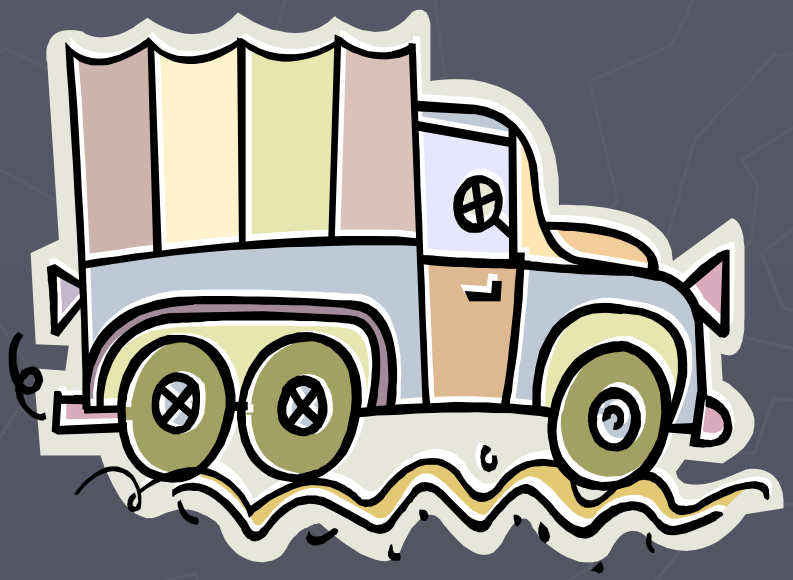
- JER, Chapter 4
- SecArmy Travel Policy
- AR 58-1

AR 58-1

- Para. 1-6 –
  - Makes regulation punitive
  - For civilians – incorporates 31 USC 1344 and 18 USC 641 to authorize suspension or more

Travel

- Travel Benefits
- Spouse Travel
- NTV use



JER, Chapter 4 – Travel Benefits

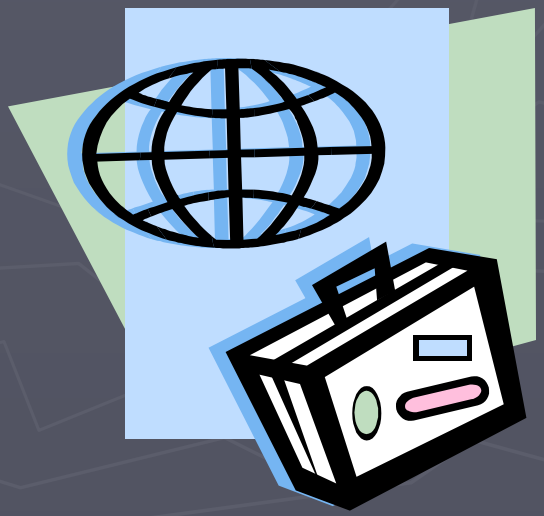
- Travel Upgrades – DoD employees may accept these upgrades as long as they are generally available to the public or all military members.

Chapter 4 – Travel Benefits

- “Bumping” =
  - If bump is involuntary, then government retains the benefit
  - If bump is voluntary and official travel is not affected, then DoD employee retains the benefit (report on travel voucher, take appropriate leave)
  - If bump is voluntary and official travel affected – you’re in trouble

Test Question # 4

- Soldiers traveling by commercial air on official business.
- Flight is more than 14 hours, non stop.
- Entitled to fly first class or business class or coach?



Sec Army Travel Policy – 7 Jan 05

- Commercial coach is “primary mode of transportation used for official travel by all Army officials.”
  - Premium class travel approval authority = SecArmy or designee
    - No automatic “14 hour” exception
  - First-class travel approval authority = SecArmy
  - Paragraph 4b - No accepting first- / business-class upgrade if in uniform

Sec Army Travel Policy – 7 Jan 05

- Paragraph 4b - No accepting first- / business-class upgrade if in uniform based on FFM upgrade

- * UNSOLICITED ON THE SPOT upgrades may be accepted, even if in uniform!

Sec Army Travel Policy

- Mil Air – must be approved by SecArmy / Director of Army Staff / MACOM commanders

Sec Army Travel Policy

- Frequent-Flier Mileage (FFM) Credits incurred during official travel are considered personal property as of 2002!
  - Retroactive – all FFM accrued before this date becomes personal property as well!
  - Don’t manipulate travel to accrue these benefits!

Sec Army Travel Policy

- “Home to work” gov’t transportation authorized for SA and CSA – SA approval for anyone else.
- Use of gov’t transportation for official after-hours functions – installation commander approval and must begin and end at place of duty (also in AR 58-1, paragraph 2-3c).

Sec Army Travel Policy - Spouses

- Spouse accompaniment on official travel – SecArmy / 4-star GOs / C, NGB approval
- Spouse / family member nonofficial travel = noninterference (reimbursable) travel, prior approval necessary.
- Spouse travel in gov’t vehicles when space is available in gov’t vehicle already authorized for official business and sponsor is there (also in AR 58-1, paragraph 2-3b)

Sec Army Travel Policy – Spouses

- Independent spouse travel –
  - Attending service-endorsed training and then provides related volunteer service
  - Attending as a subject-matter expert
  - Serving as a delegate to an official conference

NTVs - Sec Army Travel Policy

- NTV may not be used to support:
  - Private social functions
  - Personal errands
  - Dependents not accompanied by sponsor
- Also in AR 58-1, paragraph 2-4b – NOT to go to
  - Commissaries, PX, bowling alleys, Officer and NCO clubs, or NAF activities unless on official business or TDY

NTVs

- NTV may be used to support (AR 58-1, paragraph 2-3, and SecArmy Travel Policy)
  - Official ceremonies
  - Mandatory appointments
  - Installation-sponsored sports teams, MWR activities, chaplain programs
  - Emergency leave transportation
  - DoD Family Advocacy

AR 58-1

- Government-Owned Vehicles may be used while on TDY to go (para. 2-3i):
  - To and from lodging
  - Restaurants, PT, barber shop
  - Religious services
  - NOT entertainment

- * AND for domicile to duty transportation to airport in support of official travel!

AR 58-1

- Rental vehicles, while on TDY, may be used to go:
  - To and from lodging
  - Restaurants, PT, barber shop
  - Religious services
  - BUT gov’t won’t cover you for “out-of-scope” accidents
    - Example – wreck at midnight in the parking lot of a bar

Sample Allegation

- “That LTC Xray improperly sent a NTV with driver to pick up her spouse from their quarters and drive him to the change of command in violation of AR 58-1.”

Sample Allegation

- “That SGT Smith improperly stopped at the AAFES dry cleaners to pick up his laundry while using a unit HMMWV in violation of AR 58-1.”

Test Question # 5

- True or False – you must file a disqualification statement with your supervisor when giving out your resume to any companies or to a headhunter firm while seeking post-federal employment.

JER Chapter 5 – Post Federal Employment Restrictions

- **Cashing In For Profit?**

  Jan. 5, 2005

  Pentagon Scandal Uncovered

- **(CBS)** Chances are you've never heard of Darleen Druyun, but she's been spending a lot of your money — your tax money.

  For 10 years, Druyun was the Air Force official who decided how much to pay for bombers, fighters, missiles -- you name it.
  She had such a reputation for toughness, she was commonly known as "The Dragon Lady." Which is why there is shock that Druyun, one of the most powerful women in Washington, is headed to prison.

  In the biggest Pentagon scandal in 20 years, it appears that billions of dollars were doled out to the Boeing Company, as Druyun was accepting personal favors for her family.

JER – CH 5 – Conflicts of Interest

- 18 USC 208 –
  - Applies to all federal employees
  - Prohibits personal and substantial participation in an official capacity in any particular matter if it will have a direct and predictable effect on the employee's (or family member's) financial interest.
  - Includes negotiation or arrangement concerning prospective employment.
- Also in FAR, Chapter 3

Test Question # 6

- True or False - A commander selling his own car to a subordinate violates the JER.

JER, Ch 5 – Conflicts of Interest

- Section 5-409 – DoD employees shall not solicit or make sales to DoD personnel who are junior in rank, grade, or position, or to their family members on or off duty.
  - Non-commercial personal or real property exception

Sample Allegation

- “That MSG Nice improperly solicited her subordinates to buy Girl Scout cookies from her for her daughter’s benefit in violation of DoD 5500.7-R, 5-409.”

JER, Chapter 9 Post-Government Federal Employment Restrictions

- **41 USC 423**
  - Applies to all DoD personnel
  - Prohibits personal and substantial participation in a DoD procurement valued at more than $100,000 when seeking employment with a bidder or offer.
  - Applies for one year after contract award, service, or decision or acceptance of compensation from prime contractor on a DoD contract valued in excess of $10,000,000.

JER, Ch 9, Post-Government Service Employment

18 USC 207 “The One-Year Cooling Off Period”

- For GOs and SESs, prohibits communication on behalf of any other person before agency in which last served for 1 year - (c).

JER, Ch 9, Post-Government Service Employment

- 18 USC 207, continued =
- A1 - For all federal employees, prohibits “communication to or appearance before” any federal agency regarding matters in which you personally and substantially participated involving a specific party and where U.S. is a party.

JER, Ch 9, Post-Government Service Employment

- 18 USC 207, continued =
- A2 - For two years after terminating federal service, prohibits communication before any federal agency regarding particular matters which you reasonably should have known were actually pending under your official responsibility within 1 year before leaving federal service and involving a specific party in which the U.S. has a direct and substantial interest.

Gifts

- From outside sources
- From subordinates
- Foreign Gifts

Gifts from Outside Sources

- Is it a gift?
- Is it from a prohibited source or due to my official position?
- Does an exception apply?
- Should I reject the gift anyway?

Commonly Used sections of 5 CFR 2635 - GIFTS

- Section 2635.202 – “Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:
  - (1) From a prohibited source; or
  - (2) Given because of the employee’s official position.”

Commonly Used sections of 5 CFR 2635 - GIFTS

- **Section 2635.203(b) – “Gift” includes any**
  - **Gratuity**
  - **Favor**
  - **Discount**
  - **Entertainment**
  - **Hospitality**
  - **Loan**
  - **Forbearance**
  - **Or other item having monetary value,**
  - **Services**
  - **Training**
  - **Transportation**
  - **Local travel**
  - **Lodging, and**
  - **Meals**

31 USC 1353

- Acceptance of travel and related expenses from non-Federal sources
- See ethics counselor before and after TDY

Commonly Used sections of 5 CFR 2635 - GIFTS

- 2635.203(b) – “Gift” does not include:
  - Modest items of food and refreshments other than as part of a meal;
  - Greeting cards and items with little intrinsic value such a plaques, certificates, and trophies, which are intended solely for presentation;
  - Benefits available to the public or to all government employees or all uniformed military personnel;
  - Prizes in contests and events open to the public;
  - Anything secured under government contract;
  - Anything for which employee paid full market value.

Commonly Used sections of 5 CFR 2635 - GIFTS

- 2635.203(d) – “Prohibited Source” means any person who
  - Is seeking official action by the employee’s agency
  - Does business or seeks to do business with the employees agency
  - Conducts activities regulated by the employee’s agency
  - Has interests that may be substantially affected by performance or nonperformance of employee’s official duties.

Commonly Used sections of 5 CFR 2635 - GIFTS

- Section 2635.204 – EXCEPTIONS!
  - Gifts of $20 or less ($20/$50 rule)
  - Personal relationship gifts
  - Widely attended gatherings
  - Social invitations
  - Meals, refreshments, and entertainment in foreign areas

HOWEVER . . . .

- You never have to accept a gift - - even if an exception applies!

Commonly Used sections of 5 CFR 2635 - GIFTS

- Section 2635.205 – Proper disposition of prohibited gifts
  - Return it
  - Pay FMV
  - Share with office
  - Give to MWR / GSA

Sample Allegation

- “That MSG Purple improperly accepted a room upgrade from the Happy Hotel, a prohibited source, while acting as the government contact for the Regional Inspector General conference in violation of 5 CFR 2635.202.”

Commonly Used sections of 5 CFR 2635 - GIFTS

- Gift Between Employees
  - Section 2635.302 – An employee may not
    - Give a gift to either his own or the other employee's official superior
    - Solicit a contribution from another employee for a gift to either his own or the other employee's official superior
    - Likewise, a superior may not accept a gift from an employee receiving less pay unless
      - No senior / subordinate relationship or
      - A preexisting personal relationship exists.

Commonly Used sections of 5 CFR 2635 - GIFTS

- But of course, there are EXCEPTIONS!
  - 2635.304 –
    - Items (not cash) valued at $10 or less
    - Office food
    - Personal hospitality and items given in connection with personal hospitality
    - Transferred leave

Test Question # 7

- True or False - No one may contribute more than $10 to a “special and infrequent occasion” gift.

Commonly Used sections of 5 CFR 2635 - GIFTS

- 2635.304 – another exception – Special, Infrequent Occasions
  - Marriage, illness, birth, or adoption of child
  - Upon termination of subordinate / superior relationship

MORE ON GIFTS – DoD 5500.7-R, section 2-203

- $300 limit on special, infrequent gifts from a group including a subordinate
- Aggregation of donating groups if there's overlap
- No more than $10 may be solicited – all contributions voluntary
- Ethics counselor does not *have* to approve all gifts before the farewell – but it's a good idea!
  - Sec Perry exception

Foreign Gifts

- DoDD 5500.7-R section 2-300, 5 USC 7342, DoDD 1005.13 and AR 600-8-22
- A DoD employee may not accept a gift from a foreign government valued at over $305 (used to be $285).

Sample Allegation

- “That SFC Cheese improperly ordered subordinates to pay $25 each for COL Jordan’s farewell gift in violation of DoD 5500.7-R, section 2-203.”

Test Results

- All Seven Correct – Master Black Belt!
- 5-6 Correct – Black Belt!
- 3-4 Correct – Green Belt!
- 1-2 Correct – No Belt!
- Zero Correct – Report to SAIG-Legal for a responsive reading of the JER.

Questions?